

IDAHO DEPARTMENT OF WATER RESOURCES

IBLA 77-462

Decided June 26, 1980

Appeal from decision of the Idaho State Office, Bureau of Land Management, rejecting, in part, application for segregation under the Carey Act, 43 U.S.C. § 641 (1976). I-8940.

Affirmed.

1. Act of August 18, 1894 -- Act of March 15, 1910 --
State Selections -- Withdrawals and Reservations:
Generally -- Withdrawals and Reservations: Reclamation
Withdrawals -- Withdrawals and Reservations: Temporary
Withdrawals

Applications filed for temporary withdrawals of land for proposed development under the Carey Act, 43 U.S.C. § 641 (1976), must be rejected where the lands have previously been withdrawn or classified for other Federal purposes.

APPEARANCES: Josephine P. Beeman, Esq., Assistant Attorney General, State of Idaho, for the appellant; William G. Kelly, Jr., Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GOSS

The Idaho Department of Water Resources has appealed from a decision of the Bureau of Land Management (BLM), dated June 16, 1977, 1/ rejecting in part, appellant's application for segregation under the

1/ Decision herein has been withheld pending judicial determination of Andrus v. Idaho, 48 U.S.L.W. 4414 (1980), infra.

Carey Act, 43 U.S.C. § 641 (1976), for the Indian Hills Project, I-8940. The subject land, described as lot 12, sec. 3, and lot 8, sec. 4, T. 6 S. R. 8 E., Boise meridian, Owyhee County, Idaho, had been withdrawn under powersite classifications 435 and 457 and Public Land Order No. 4153, 32 LFR 2888 (Feb. 15, 1967), for the C. J. Strike Wildlife Management Area. Accordingly, BLM held the land "not subject to application for disposal under the public land laws."

In its statement of reasons for appeal, appellant maintains that the Secretary has "no discretion to accept or reject" the State's application for land, but that his "only function * * * is to ascertain whether the specified conditions of settlement and reclamation" have been met by the State under the Carey Act, supra. In essence, appellant contends that the withdrawals were without effect where the State subsequently applied for segregation of the land under the Carey Act, supra.

[1] The Carey Act "authorizes and empowers" the Secretary, with the President's approval, upon proper application by a State to donate, grant, and patent desert lands as the State should cause to be irrigated, reclaimed, and occupied. The Act also authorized the Secretary to temporarily withdraw desert lands, upon request of a State, prior to submission of a formal plan under the Act. 43 U.S.C. § 643 (1976), repealed section 704(a), Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (1976). 2/

An application for segregation of land which has been withdrawn or classified for other Federal purposes must be rejected. 43 CFR 2091.1. Accordingly, BLM properly rejected appellant's application.

Appellant's objections have been considered by the Supreme Court in Andrus v. Idaho, supra, n.1. The Court held that the Secretary has discretion to accept or reject a State's application for land under the Carey Act, whether or not the land has been withdrawn for other uses. Furthermore, "[T]he Act does not prevent the Secretary from committing otherwise available parts of the public domain for any of the uses authorized under the various statutes relating to the use and management of the public lands." Andrus, v. Idaho, 48 U.S.L.W. 4414, 4419 (1980).

2/ The authority to temporarily withdraw desert lands under the Carey Act, supra, has been superseded by section 204 of FLPMA, 43 U.S.C. § 1714 (1976), which gives the Secretary a general authority to make withdrawals. Effective June 20, 1980, Departmental regulations have been amended by the addition of 43 CFR Part 2610--Carey Act Grants. 45 FR 34230 (May 21, 1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Douglas E. Henriques
Administrative Judge

